Remarks

Reconsideration of this Application is respectfully requested.

Upon entry of the foregoing amendment, claims 1-7 and 10-16 are pending in the application, with claims 1, 4, and 7 being the independent claims. Claims 8-9 and 17-20 are sought to be cancelled without prejudice to or disclaimer of the subject matter therein. These changes are believed to introduce no new matter, and their entry is respectfully requested.

Based on the above amendment and the following remarks, Applicants respectfully request that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Statutory Type Double Patenting Rejection

The Examiner has rejected claims 1-20 under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-20 of copending U.S. Patent Application No. 10/880,769. Applicants respectfully traverse.

Applicants have cancelled claims 8-9 and 17-20 thereby rendering the rejection of these claims moot. Accordingly, Applicants respectfully request that the same invention type double patenting rejection of claims 8-9 and 17-20 be withdrawn.

Claims 1-7 and 10-16 of copending Application No. 10/880,769 have been cancelled thereby rendering the rejection of claims 1-7 and 10-16 in the instant application moot. Accordingly, Applicants respectfully request that the same invention type double patenting rejection of claims 1-7 and 10-16 be withdrawn.

Rejections under 35 U.S.C. § 101

On page 2 of the Office Action, claims 17-20 were rejected under 35 U.S.C. § 101 as being allegedly directed to non-statutory subject matter. Without acquiescing to the propriety of the rejection, Applicants have cancelled claims 17-20 in the above amendment to expedite prosecution. The rejection of claims 17-20 is therefore rendered moot. Reconsideration and withdrawal of the rejection is respectfully requested.

Rejections under 35 U.S.C. § 102

The Examiner has rejected claim 8 under 35 U.S.C. § 102(e) as being allegedly anticipated by U.S. Publication No. 2003/0189952 to Long et al. (hereinafter "Long"). Claim 8 has been cancelled by the above amendment. The rejection of claim 8 is therefore rendered moot. Reconsideration and withdrawal of the rejection is respectfully requested.

Rejections under 35 U.S.C. § 103

The Examiner has rejected claims 1, 4, 7, and 17 under 35 U.S.C. § 103(a) as being allegedly unpatentable over Long in view of U.S. Publication No. 2002/0181609 to Tzannes (hereinafter "Tzannes"). For the reasons set forth below, Applicants respectfully traverse.

Independent claim 17 has been cancelled by the above amendment. The rejection of claim 17 is therefore rendered moot. Reconsideration and withdrawal of the rejection is respectfully requested.

Independent claim 1 is directed to a method for controlling transmission latency in a communications system. The method comprises:

> determining a first bit rate for symbols transmitted during the first noise phase, and a second bit rate for symbols transmitted during the second noise phase, the first bit rate and the second bit rate being constrained such that a transmission latency does not exceed a predetermined maximum allowed transmission latency; and
>
> transmitting symbols at the first bit rate during the first noise phase and at the second bit rate during the second noise phase.

Long does not teach or suggest each of the foregoing features of claim 1. For example, Long does not teach or suggest "[a] first bit rate and [a] second bit rate being constrained such that a transmission latency does not exceed a predetermined maximum allowed transmission latency." The Examiner, on page 4 of the present Office Action explicitly agrees that Long fails to teach or suggest this feature.

Tzannes does not provide this missing teaching. Tzannes discloses a system and method that allows transmission bit rates to be changed seamlessly. *See* Tzannes, paragraph [0036]. At paragraph [0166], Tzannes applies this seamless rate adaptation system and method to a dual latency system with two paths — an upper path and a lower path. Each of these two paths are associated with a particular latency, i.e. the upper path is associated with a high latency and the lower path is associated with a low latency. Tzannes, at most, mentions that the low latency lower path may be kept at a constant data rate if it is carrying, for example, voice data that cannot tolerate a rate change. *See* Tzannes, paragraph [0166]. Even if we assume, arguendo, that this is a form of constraining the bit rate of the low latency path, which Applicants do not acquiesce to, Tzannes still fails to teach or suggest "[a] first bit rate **and** [a] second bit rate being constrained such that a transmission latency does not exceed a predetermined maximum

allowed transmission latency." (emphasis added). The features of claim 1, noted above, constrains both a first **and** second bit rate in order to meet a transmission latency, whereas Tzannes, at most, constrains a **single** bit rate in order to meet a given latency.

Since neither Long nor Tzannes, alone or in combination, teach or suggest each and every feature of independent claim 1, the combination of Long and Tzannes fails to support a *prima facie* obviousness rejection of that claim. (*See*, MPEP 2143A) Accordingly, Applicants respectfully request that the rejection of claim 1 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Independent claims 4 and 7 both recite the feature of "[a] first bit rate and [a] second bit rate being constrained such that a transmission latency does not exceed a predetermined maximum allowed transmission latency." As noted above with respect to claim 1, Long and Tzannes, alone or in combination, fail to teach or suggest this feature. Consequently, the combination of Long and Tzannes fails to support a prima facie obviousness rejection of these claims. Accordingly, Applicants respectfully request that the rejection of claims 4 and 7 under 35 U.S.C. § 103(a) be reconsidered and withdrawn.

Other Matters

The Office Action Summary indicates that claims 2-3, 5-6, and 10-16 were rejected in the present Office Action. However, the detailed action does not include a specific rejection of claims 2-3, 5-6, and 10-16, with the exception of the rejection under 35 U.S.C. § 101. Accordingly, Applicants assume claims 2-3, 5-6, and 10-16 are patentable over the cited art, and are currently allowable given that the rejection under 35 U.S.C. § 101 has been addressed and overcome.

Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicants believe that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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